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12

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 SACRAMENTO DIVISION
16

17 X CORP.,
18

Plaintiff,
19

v.
20

ROBERT A. BONTA, Attorney
21 General of California, in his
official capacity,
22

Defendant.
23

No. 2:23-cv-01939-WBS-AC

**AFFIDAVIT OF WIFREDO FERNANDEZ
IN SUPPORT OF X CORP.'S MOTION
FOR PRELIMINARY INJUNCTION**

1 Wifredo Fernandez, being duly sworn, deposes and states as follows:

2 1. I am the Head of Government Affairs for the United States
3 and Canada at X Corp., a position I have held since May 2023.

4 2. I have been employed by X Corp. (previously Twitter,
5 Inc.) since September 2020. I served as Federal and State Public
6 Policy Manager from September 2020 to April 2022 and Head of State
7 and Local Public Policy from April 2022 to May 2023.

8 3. I hold a law degree from the University of Miami, a
9 Master of Arts in Teaching from American University, and a Bachelor
10 of Arts in Political Science from the University of Pennsylvania.

11 4. I am submitting this affidavit in support of Plaintiff's
12 Motion for Preliminary Injunction. I have personal knowledge of
13 the facts set forth herein, unless otherwise noted. If called upon
14 as a witness, I could and would competently testify to those facts.

15 5. Annexed as **Exhibit 1** is a true and correct copy of the
16 November 3, 2022 letter from Robert A. Bonta, Attorney General of
17 California, in his official capacity, to Elon Musk (then-CEO of
18 Twitter, Inc.), Mark Zuckerberg (CEO of Meta Platforms, Inc.),
19 Susan Wojcicki (then-CEO of YouTube, Inc.), Shou Zi Chew (CEO of
20 TikTok, Inc.), and Steve Huffman (CEO of Reddit, Inc.). Exhibit 1
21 is available online at
22 [https://oag.ca.gov/system/files/attachments/press-](https://oag.ca.gov/system/files/attachments/press-docs/Election%20Disinformation%20and%20Political%20Violence.pdf)
23 [docs/Election%20Disinformation%20and%20Political%20Violence.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Election%20Disinformation%20and%20Political%20Violence.pdf).

24 6. Annexed as **Exhibit 2** is a true and correct copy of the
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1 November 4, 2022 press release *Attorney General Bonta Calls on*
2 *Social Media Companies to Stop the Spread of Disinformation Ahead*
3 *of 2022 Midterm Elections*, which publicized the letter attached as
4 Exhibit 1. Exhibit 2 is available online at
5 [https://oag.ca.gov/news/press-releases/attorney-general-bonta-](https://oag.ca.gov/news/press-releases/attorney-general-bonta-calls-social-media-companies-stop-spread-disinformation)
6 [calls-social-media-companies-stop-spread-disinformation.](https://oag.ca.gov/news/press-releases/attorney-general-bonta-calls-social-media-companies-stop-spread-disinformation)
7

8 7. In my capacity as Head of Government Affairs at X Corp.,
9 I have significant experience working with the offices of state
10 Attorneys General across the nation, including Attorney General
11 Robert A. Bonta's office. My job duties include liaising with the
12 offices of various Attorneys General, including Attorney General
13 Bonta's office. As part of my job, I frequently review, interpret,
14 and respond to correspondence sent to X Corp. by the offices of
15 Attorneys General and advise X Corp. - from a policy perspective -
16 as to how best to interpret and respond to such correspondence.
17

18 8. As part of my job, I reviewed and analyzed the November
19 3, 2022 letter from AG Bonta, Exhibit 1, and the November 4, 2022
20 press release publicizing the letter, Exhibit 2.

21 9. Exhibit 1 is a November 3, 2022 letter from Attorney
22 General Bonta to X Corp.'s CEO, Elon Musk, and the then-CEOs of
23 other major social media companies - Meta, YouTube, TikTok, and
24 Reddit. The letter "express[es] concern" with what Attorney
25 General Bonta calls "the ongoing spread of disinformation and
26 misinformation through social media platforms operated by your
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1 companies." Ex. 1 at 1. In the letter, AG Bonta makes clear that
2 he believes X Corp.'s moderation efforts concerning disinformation
3 and misinformation – and those of the other social media companies
4 he is writing to – are "insufficient" and "inadequate." Exhibit 1
5 at 1, 8.
6

7 10. The categories of speech that AG Bonta focuses on in the
8 letter – disinformation and misinformation – are two of the
9 categories of content enumerated in AB 587. § 22677(a)(3).

10 11. The Attorney General "urge[s]" and "implore[s]" the
11 companies to take certain action – namely, "to strengthen and
12 accelerate your companies' ongoing efforts to consistently,
13 transparently, and aggressively address violations of your policies
14 with respect to disinformation and violations of state and federal
15 law" and "to employ your immense resources, tools, and familiarity
16 with the operation of your social media platforms to stop the
17 spread of disinformation, misinformation, conspiracy theories, and
18 threats that fuel political violence." *Id.* at 2.
19

20 12. The language used by the Attorney General in the letter
21 is strong: it states that, "notwithstanding your efforts towards
22 combating false information online, its continued spread and
23 increasingly violent consequences demand greater corrective
24 action." *Id.* at 3. Part of that "greater corrective action" is,
25 in the view of the Attorney General, for the social media companies
26 to "take action" to better "enforce" "published policies that
27
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1 prohibit much of the disinformation, coordinated inauthentic
2 behavior, and election interference exhibited previously." *Id.*
3 The letter repeatedly uses language strongly suggesting that, in
4 the view of the Attorney General, the social media companies have
5 "a duty," "a responsibility," and "an obligation" – both legally
6 and morally – to stop the spread of what he refers to as
7 "disinformation" and "misinformation." *Id.* at 4, 7.
8

9 13. That the Attorney General conveys that he believes the
10 duties are, in part, legal is made clear by a section of the letter
11 that is entitled "The State of California Has A Mandate to Protect
12 its Citizens' Voting Rights." *Id.* at 4. That section makes
13 reference to numerous California state laws that Attorney General
14 Bonta argues prohibit certain types of speech that might be labeled
15 "disinformation" or "misinformation" in connection with the
16 political process.
17

18 14. The Attorney General cites eight California laws in that
19 section, one of which is AB 587, the law at issue in this case. As
20 to that law, the Attorney General states in the letter that, "[i]n
21 2024, social media platforms will also have additional transparency
22 obligations, as required by recent state legislation that requires
23 disclosures on content moderation practices as it relates to
24 extremism or radicalization, disinformation or misinformation, and
25 foreign political interference." *Id.*
26

27 15. The very next sentence after the one about AB 587
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1 contains a clear threat of enforcement. It states, "[t]he
2 California Department of Justice will not hesitate to enforce these
3 laws [i.e., the eight mentioned, including AB 587] against any
4 individual or group that violates them. However, given social
5 media's predominance and influence in American political discourse,
6 your companies and you as these companies' executives share a
7 responsibility to use the tools at your disposal to combat the
8 dissemination of disinformation that interferes with our electoral
9 system and to report to law enforcement illegal activity detected
10 on your respective social media platforms that interferes with
11 Americans' right to vote." *Id.* (emphasis added).
12

13 16. This threat of enforcement of AB 587 and the other
14 referenced California laws is coupled with a series of carefully-
15 worded demands from the Attorney General appearing in other
16 sections of the letter. Specifically, the letter states:
17

18 a. "It is [] **incumbent on your companies** to institute and
19 enforce durable dynamic policies that will actually
20 prevent disinformation and misinformation from
21 spreading." *Id.* at 3 (emphasis added).
22

23 b. "I **urge** you to strengthen and accelerate your
24 companies' ongoing efforts to consistently,
25 transparently, and aggressively address violations of
26 your policies with respect to disinformation and
27 violations of state and federal law." *Id.* at 2
28

1 (emphasis added).

2 c. "I **implore** you to do more to rid your platforms of the
3 dangerous disinformation, misinformation, conspiracy
4 theories, and threats that fuel political violence,
5 spread fear and distrust, and ultimately chill our
6 democratic process." *Id.* at 8 (emphasis added).
7

8 d. "You **must** continue to take action pursuant to [X
9 Corp.'s] policies and enforce [X Corp.'s] terms
10 against disinformation, voter suppression, and
11 coordinated inauthentic or violent behavior." *Id.* at
12 3 (emphasis added).
13

14 e. "I [] **implore** you to employ your immense resources,
15 tools, and familiarity with the operation of your
16 social media platforms to stop the spread of
17 disinformation, misinformation, conspiracy theories,
18 and threats that fuel political violence." *Id.* at 2
19 (emphasis added).
20

21 17. The Attorney General's press release (Exhibit 2)
22 reinforces the message that the Attorney General is demanding
23 action from the social media companies on this subject. For
24 example, it states that, "In advance of the upcoming 2022 midterm
25 elections, social media platforms **must** take further action - such
26 as enforcement of their content moderation policies and terms of
27 service - to stop the spread of disinformation and misinformation
28

1 that attack the integrity of our electoral processes." Exhibit 2
2 at 1-2 (emphasis added).


3 18. Based on my experience, letters from Attorneys General,
4 such as this one, that "urge" companies to take action that the
5 Attorney General claims they have a "duty" or "responsibility" to
6 do, and, at the same time, threaten enforcement of certain
7 specified laws, are a precursor to legal action taken by the
8 Attorney General if the companies don't "voluntarily" take the
9 actions requested by the Attorney General.
10

11 19. Based on my experience in governmental affairs and in
12 dealing with numerous offices of Attorneys General across the
13 country, I interpret Attorney General Bonta's letter as a thinly-
14 veiled threat from the Attorney General to try to force X Corp. to
15 limit specific speech - here, "misinformation" or "disinformation,"
16 presumably as defined by Attorney General Bonta's Office - that
17 Attorney General Bonta finds objectionable or face enforcement
18 action. The letter and press release make clear that the Attorney
19 General intends to use enforcement of AB 587 as one of his many
20 tools to "urge" or pressure social media companies to "enforce[]
21 their content moderation policies and terms of service" in order
22 "to stop the spread of disinformation and misinformation that
23 attack the integrity of our electoral processes." Ex. 2.
24

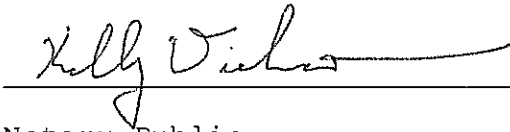
25 20. X Corp. takes very seriously its obligations to enforce
26 its own content moderation policies on the X platform, and X has
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1 processes and procedures in place to enforce those policies. It
2 is not the State of California's place to dictate to X Corp. what
3 those policies should be or to pressure X Corp. with threats to
4 enforce laws like AB 587 to regulate constitutionally-protected
5 content in ways that the State wants or insists upon.
6

7
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9
10 Dated: Washington, D.C.
11 October 4, 2023


WIFREDO FERNANDEZ

12
13 Sworn to before me this
14 4th day of October, 2023
15

16 
17
18 Notary Public

